

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY	:	X
and CHARLIE SAVAGE,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	<u>COMPLAINT</u>
	:	
DEPARTMENT OF JUSTICE,	:	
	:	
Defendant.	:	
	:	
	:	
	X	

Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to obtain an order for the production of agency records from Defendant Department of Justice (“DOJ”) in response to a FOIA request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, in Manhattan.

3. Plaintiff Charlie Savage is a reporter for *The New York Times* and an employee of The New York Times Company.

4. Defendant DOJ is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Defendant DOJ has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Plaintiffs are therefore deemed to have exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

8. On June 1, 2018, Plaintiffs submitted a FOIA request to DOJ (FY18-135) seeking “the following OLC memo: Memorandum Opinion for the Counsel to the President, from Karl R. Thompson, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Authority to Use Military Force in Iraq (Dec. 30, 2014).” The request further noted that the memo “was cited on page 11 of the May 31, 2018, OLC opinion ‘April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities’ but has not yet been published by the office.”

9. On July 27, 2018, DOJ acknowledged receipt of the FOIA request and assigned the request to the “complex” processing track.

10. DOJ has failed to respond to Plaintiffs’ FOIA request within the statutory time frame required under FOIA.

COUNT

11. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

12. Defendant DOJ is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

13. DOJ has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

14. DOJ has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

15. Accordingly, Plaintiffs are entitled to an order compelling DOJ to produce records responsive to their FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

16. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

17. Order DOJ to provide the requested documents to Plaintiffs within 20 business days of the Court's order;

18. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

19. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
August 7, 2018

/s/
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